

IN THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

JAN 11 2010

Alfred Valentino Garcia,
Plaintiff,

MATTHEW J. DYKMAN
CLERK

v.

Case No. 6:09-CV-01103-
LH-LFG

State of New Mexico, Governor Bill
Richardson, New Mexico Department
of Corrections, Joe Williams, Erma
Sedillo, Mike Herrera, Eric Rosas,
and unidentified Corrections Department
personnel and contractors,
Defendants.

MOTION TO AMEND TORT ACTION FOR NEGLIGENCE,
BREACH OF FIDUCIARY DUTY AND VIOLATION OF
PLAINTIFFS CONSTITUTIONAL PROTECTIONS BOTH STATE
AND FEDERAL

The nature of this action is authorized by the
State of New Mexico Tort Claims Act N.M.S.A. 41, the
Plaintiff Alfred Valentino Garcia is an inmate in the New
Mexico Department of Corrections, Lea County Correctional
Facility who seeks damages for the following:

JURISDICTION

The United States District Court for the
District of New Mexico. A Notice of Claim was filed with
the State of New Mexico's Risk Management Division on
or about 11-29-07 by placing said notice in the mail

receptical at Lea County Correctional Facility 6900 West Millen Drive 50725 Hobbs, New Mexico 88244.

PARTIES

The Plaintiff Alfred Valentino Garcia is an inmate at the New Mexico Department of Corrections, Lea County Correctional Facility 6900 West Millen Drive 50725 Hobbs, New Mexico 88244.

Defendant's are employed by the state of New Mexico, State of New Mexico Corrections Department either as Governor, Cabinet heads, supervisory positions and/or other employees.

GENERAL ALLEGATIONS

1. On or about 10-2-07 an informal grievance was filed about the loss or destruction of his property. There was no response on the informal. On or around 10-2-07 a request was sent to the property officer Eric Rosas about the loss or destruction of his property. An unidentified Captain responded by bringing Plaintiff's radio which was lost but not the rest of the items. On or about 10-16-07 a formal grievance was filed on the loss or destruction of his property. They acknowledged that some of his property did not make it into his property so they awarded him 50 dollars. On or about 12-10-07 the appeal was filed because 50 dollars was not sufficient enough to have to require all the items lost or destroyed. The appeal was denied by Erma Sedillo. On or about 11-29-07 the Notice of Claim was sent to New Mexico's Risk Management. There was no response.

The Plaintiff has exhausted all administrative remedies available On or about September 24, 2007 thru

November 29, 2007. Defendant's did cause or participated in the Plaintiff to suffer the loss or destruction of valuable property.

2. On or about 9-24-09 Plaintiff was put into segregation. The unidentified officer/s collecting the property and the unidentified officer/s in housing unit control room lost, destroyed and/or did not keep the property safe. On or about 9-26-09 Plaintiff's property was brought by property officer Eric Rozas. Property items were missing. Upon request Plaintiff's radio was found but many of other items were not turned up. Plaintiff was informed that officers do not care about inmates or inmates property because they can get away with anything and are protected by the Governor, Joe Williams and/or other cabinet heads.

Through gross negligence and breach of fiduciary duty the defendants did deprive the Plaintiff of his property in direct violation of his Constitutional Protections, created by both the state of New Mexico and the United States Constitution. Defendants did cause the loss or destruction of personal property belonging to the Plaintiff Albrod Valentino Garcia upon segregation.

3. By the act of Plaintiff's property being lost or destroyed He had to endure the winters cold without, spend more money on things He already had and had to suffer other uncomfortable conditions.

This intentional act was done with reckless wanton, and indifference to Plaintiff's Constitutional Rights.

4. this action resulted in financial loss in excess of \$250.00.

COUNT II

6. On or about September 24, 2007 thru November 29, 2007 defendant's violated Plaintiff's Constitutional Rights by depriving him of his property, and/or destruction of that property without due process of Law. These acts were intentional, malicious and carried out with complete indifference to Plaintiff's Federal and State Constitutional Protections.

PRAYER

Wherefore it is demanded the court issue judgment against the defendant's both jointly and severally as followed;

For negligence resulting in the loss or destruction of Plaintiff's property. Compensatory damages in the sum of \$250.00 Two hundred and fifty dollars.

For breach of Fiduciary duty and deprivation of Plaintiff's property. Pecuniary damages in the sum of \$3500.00 Three thousand and five hundred dollars.

For violation of Plaintiff's Constitutional Protections. Irreparable damages in the amount of \$300,000.00 Three hundred thousand dollars.

Pre judgment interest of 8% Apr and further Relief the Courts may deem appropriate in this case.

Plaintiff reserves the Right to amend this complaint or add additional counts as information becomes available through discovery.

Plaintiff demands a trial by jury.

Respectfully Submitted

by ~~Valentino Garcia~~ #50725

Alfred Valentino Garcia
6900 West Miller Drive 50725
Hobbs, New Mexico
88244

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7th day of January, 2010, I filed the foregoing MOTION TO AMEND TORT ACTION FOR NEGLIGENCE, BREACH OF FIDUCIARY DUTY AND VIOLATION OF PLAINTIFF'S CONSTITUTIONAL PROTECTIONS BOTH STATE AND FEDERAL via mail through The United States Postal Service.

I FURTHER CERTIFY that I mailed a copy, first class mail, postage prepaid addressed as follows:

Little West, Defendants Attorney
Post Office Box 5098
Santa Fe, New Mexico
87502-5098

Respectfully Submitted

by Valentino Garcia #50725

Alfred Valentino Garcia

Mister Valentino Garcia
6900 West Millen Drive 50725
Hobbs, New Mexico 88241

RECEIVED
AT ALBUQUERQUE NM

JAN 11 2010

United States District Court
for the District of New Mexico
Clerk of the Court
Attention: Honorable Judge Lorenzo F. Garcia
333 Lonas Boulevard, North West
Albuquerque, New Mexico

Suite 2500 87102

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